

GAHC010141772024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(CrI.)/670/2024

SANDEEP KR NAHATA,
S/O SRI BIMAL KR NAHATA, R/O NAHATA NIWAS, CHATTRIBARI,
GUWAAHTI-1, DISTRICT KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP BY THE PP ASSAM

2:PRAVEEN KOTHAR
S/O SRI RAJENDRA KR. KOTHARI
R/O HOUSE NO. 26A
M.S. ROAD
FANCY BAZAR
GUWAHATI
PIN-781001
P.S. PANBAZAR
DIST. KAMRUP (M)
ASSAM

2:PANKAJ KUMAR KOTHARI

S/O SRI RAJENDRA KR. KOTHARI
R/O HOUSE NO. 26A
M.S. ROAD
FANCY BAZAR
GUWAHATI
PIN-781001
P.S. PANBAZAR
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : BIPASHA BORA, MR. A K BHUYAN, MS. N CHOUDHURY

Advocate for the Respondent : PP, ASSAM,

Linked Case : AB/1114/2024

PRAVEEN KOTHARI AND ANR.
S/O SRI RAJENDRA KR. KOTHARI

R/O HOUSE NO. 26A
M.S. ROAD

FANCY BAZAR
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ASSAM
VERSUS

THE STATE OF ASSAM
REP BY THE PP
ASSAM

Advocate for : MR. S D PURKAYASTHA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
O R D E R

06.08.2024

Heard Mr. A. Islam, learned counsel for the petitioners, who has filed this application under Section 438 of the Cr.P.C with prayer for pre-arrest bail, as he is apprehending arrest in connection with Noonmati Police Station Case No.100/2024 under Sections 403/406/420/426/467/468 of the IPC.

2. Heard Mr. A.K. Bhuyan, learned counsel for the informant and Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

3. The learned counsel for the informant has also filed an application under Section 340 of the Cr.P.C, which is registered as I.A. (CrI.) 670/2024 with allegations that the petitioners, Sri Praveen Kothari and Sri Pankaj Kr. Kothari have filed the bail application under Section 438 Cr.P.C registered as AB No. 1114/2024 along with documents, which are alleged to be false.

4. The learned counsel for the petitioners on the contrary submitted that these documents are not false and as the petition has not been properly scrutinized by the informant such allegations have been made against the petitioners.

5. The FIR unfolds that the informant, Sri Sandip Kr. Nahata and the petitioner no. 1, Sri Praveen Kothari are partners of a firm namely, M/S Swastic Agro Products. All the transaction relating to purchase and selling of raw materials and finished products were dealt with by the petitioner no.1, Sri

Praveen Kothari. The payment of salary, other bills and all bank transactions were handled by the petitioner no.1. During the financial year 2021-2022 and 2022-2023 many challans were issued by the petitioner no.1 or under the instruction of the petitioner no.1 by the staff while dealing with the business and an amount of Rs. 2,35,874.36/- was misappropriated by the petitioner no.1.

6. Again while paying the salary to the staff of the company during the year 2022-2023, the petitioner no.1 misappropriated an amount of Rs.13,96,969/- converting the same into his own use and benefit. Rs.2,09,785/- was also showed as excess payment and an amount of Rs.19,100/- was also misappropriated during the financial year 2022-2023. An amount of Rs.1,09,237/- was also misappropriated in the financial year 2023-2024.

7. It is further contended that a huge amount of Rs. 52,56,104/- was also misappropriated in the garb of payment while purchasing of mustard seeds; to different parties. An amount of Rs.2,03,076.51/- was further misappropriated by the petitioner no.1 and converted into his own use. Further, an amount of Rs.7,10,670/- was misappropriated.

8. It is further contended that a huge amount of money was misappropriated by the petitioner no.1 and petitioner no.2 stood as guarantor for the petitioner no.1 to obtain a bank loan after committing the aforementioned misdeeds. It is submitted that the petitioner no.1, who was in-charge of the funds have misappropriated the same.

9. It is submitted by the learned counsel for the petitioners that no offence under Section 468 IPC is made out against the petitioners. The partnership deed is marked as Annexure-1. It is submitted that when the company failed to make profit and was incurring losses to the tune of Rs. 2 crore, a false case has been

initiated against the petitioners by the informant to shift the burden on the petitioners.

10. It is further submitted on behalf of the petitioners that when the company was incurring losses, the petitioner no.1 had requested the informant to sell the company to meet the losses incurred by the company M/S Swastic Agro Products. The petitioners have submitted that the Annexure-2 is the income-tax return acknowledgment, which clearly reveals that no fund was misappropriated by the petitioners and thus, no case under Section 406 IPC is made out against the petitioners.

11. The Audit reports are also annexed along with the petition and the audit reports have also been countersigned by the informant and everything is on record and all the computations and calculations are on record and there is not a scintilla of evidence against the petitioners that the petitioners have misappropriated the company's funds. Moreover, the petitioner no.2 has been falsely roped in connection with this case and there is no direct allegation against the petitioner no.2. It has been erroneously alleged that the para no.5 of the petition itself reveals that the petitioner no.1 has not retired and the petitioners have met the informant on 15.12.2023 and it has been falsely alleged that after his retirement on 09.09.2023, the petitioner has given his signature on back date i.e. on 29.11.2023 and on the agreement of guarantee more particularly Annexure-1 of the I.A.(CrI.) No.670/2024.

12. The learned counsel for the informant has submitted that the petitioner, who was dealing with the entire business of the company has misappropriated the company's funds Crores of rupees have been siphoned off by the petitioner no.1 and he is not entitled to bail, considering the staggering magnitude of the offence. It is further submitted that investigation may be adversely affected if

the petitioners are admitted to bail.

13. I have heard the learned Addl. P.P. for the State Mr. B.B. Gogoi and the learned counsel for the informant Mr. A.K. Bhuyan. They have submitted that funds were misappropriated in a clandestine manner. Salaries were paid to several employees and a fraction of the salary was again paid back by the employees to the petitioner no.1, which the petitioner has converted to his own use. The petitioner, who was entrusted with the property, has committed breach of trust. The learned Addl. P.P. has submitted that there are incriminating materials against the petitioners in the case diary.

14. In reply, it is submitted on behalf of the petitioners that the I/O has been influenced by the informant and the witnesses have been influenced by the informant.

15. The merits of this case are not brought to the fore but the scrutiny of the case diary reveals that there are incriminating materials in the case diary. It cannot be said that there are no direct allegation against the petitioner no.2. The FIR, itself reveals prima facie allegation against the petitioner no.2.

16. I have considered the staggering magnitude of the offence. At this juncture, there appears no justified ground to extend the privilege of anticipatory bail to the petitioners. Petition is rejected at this stage. The interim order stands vacated.

17. In terms of the above observation, the petition with prayer for pre-arrest bail and the interlocutory application no.670/2024 hereby stands disposed of.

Send back the case diary.

JUDGE

Comparing Assistant